

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Lexington County

OCT 19 2016

Honorable William Jeffrey Young, Circuit Court Judge  
S.C. SUPREME COURT

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ALEXANDER LYNCH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000516

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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INDEX

INDEX.....i

GUILTY PLEA TRANSCRIPT DATED JUNE 7, 2010.....1

APPLICATION FOR POST-CONVICTION RELIEF DATED FEBRUARY 4, 2011.....28

RETURN DATED AUGUST 8, 2011 .....35

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED AUGUST 14, 2012.....39

ORDER OF DISMISSAL DATED JUNE 19, 2013 .....61

APPLICATION FOR POST-CONVICTION RELIEF DATED OCTOBER 31, 2012 .....68

RETURN DATED JULY 8, 2015 .....76

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JANUARY 14, 2016.....82

ORDER GRANTING AUSTIN APPEAL DATED FEBRUARY 3, 2016 .....88

INDICTMENT .....91

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON	)	
The State,	)	
	)	TRANSCRIPT OF RECORD
-vs-	)	2010-GS-32-0516
	)	
Alexander Edward Lynch,	)	
	)	June 7, 2010
Defendant.	)	Lexington, South Carolina

B E F O R E:

HONORABLE R. KNOX MCMAHON, JUDGE

A P P E A R A N C E S:

DEBRA B. MOORE, ESQ.  
Attorney for the State

ELIZABETH C. FULLWOOD, ESQ.  
Attorney for the Defendant

Margaret A. Woods  
Circuit Court Reporter

**ORIGINAL**

1 THE COURT: Alright, madam.

2 THE CLERK: Alexander Lynch. Indictment 2010-GS-32-0516  
3 State vs. Alexander Edward Lynch indicted for homicide by  
4 child abuse, he is pleaing as charged. The indictment has  
5 been true billed and he is represented by Ms. Fullwood. Raise  
6 your right hand, please.

7 ALEXANDER EDWARD LYNCH,  
8 having been first duly sworn, testifies as follows:

9 THE COURT: Ms. Fullwood, you represent Alexander Edward  
10 Lynch?

11 MS. FULLWOOD: Yes, Your Honor.

12 THE COURT: Have you explained to him the charge in the  
13 indictment, the possible punishment and his rights including  
14 his right to a jury trial?

15 MS. FULLWOOD: Yes, Your Honor.

16 THE COURT: In your opinion, does he understand these  
17 things?

18 MS. FULLWOOD: Yes, Your Honor.

19 THE COURT: The indictment indicates that he is indicted  
20 for murder/homicide by child abuse. How does he intend to  
21 plea to that guilty or not guilty?

22 MS. FULLWOOD: Guilty, Your Honor.

23 THE COURT: Thank you.

24 EXAMINATION BY THE COURT:

25 Q. Are you Alexander Edward Lynch?

1 A. Yes, sir.

2 Q. Mr. Lynch, before I can accept a plea of guilty it's  
3 necessary for me to determine if your plea is being given  
4 freely and voluntary, therefore I need to ask you some  
5 questions. If you do not understand my questions, please let  
6 me know, I'll try to explain them to you. If at any time you  
7 wish to talk with your lawyer, please tell me, I will allow  
8 you to do so. Do you understand?

9 A. Yes, sir.

10 Q. How old are you, Mr. Lynch?

11 A. Twenty-four, sir.

12 Q. How fardya go in school?

13 A. Eleventh grade.

14 Q. What tyapa work you do before you were incarcerated?

15 A. I worked at Publix on Harbison.

16 Q. Publix in Harbison?

17 A. Yes, sir.

18 Q. Have you ever been treated for the abuse of alcohol or  
19 drugs or for mental illness?

20 A. No, sir.

21 Q. Have you taken any medication, drugs or alcohol in the  
22 last twenty-four hours?

23 A. No, sir.

24 Q. Are you today under the influence of any medication,  
25 drugs or alcohol?

1 A. No, sir.

2 Q. Are you aware of any physical, emotional or nervous  
3 problem that might keep you from understanding what you're  
4 doing today?

5 A. No, sir.

6 Q. You've heard your attorney, Ms. Fullwood, tell me that  
7 she's explained to you the charge against you, the possible  
8 punishment and your constitutional rights and that you  
9 understand these things, is that correct?

10 A. Yes, sir.

11 Q. I've been handed up Indictment 2010-GS-32-00516, it's a  
12 true bill indictment that reads that Alexander Edward Lynch  
13 did in Lexington County, South Carolina on or about June 6th  
14 of 2009 cause injury to Victim date of birth

15 , a child who was under the age of 11 years at the time of  
16 his death on June 8th 2009, and that the defendant had caused  
17 the death of said child while committing child abuse and  
18 neglect, to wit, the defendant did violently shake the infant  
19 victim resulting in his death and/or the defendant did  
20 violently assault the infant victim resulting in his death and  
21 the death of said child occurred under circumstances  
22 manifesting an extreme indifference to human life in violation  
23 of 16-3-85 of the South Carolina Code of Laws, that is a true  
24 bill indictment for murder/homicide by child abuse. Now what  
25 are the penalties for that, solicitor?

1 MS. MOORE: Your Honor, it carries twenty (20), twenty  
2 (20) years to life.

3 EXAMINATION BY THE COURT:

4 Q. For which you can receive a sentence of twenty (20) years  
5 to life. Do you understand?

6 A. Yes, sir.

7 Q. When you plead guilty, Mr. Lynch, you give up certain  
8 very important constitutional rights. First, you give up your  
9 right to remain silent, that is, your right against self-  
10 incrimin -- crimination, your right to say nothing at all.  
11 You cannot be compelled to testify or to provide evidence  
12 against yourself. Do you understand that?

13 A. Yes, sir.

14 Q. Second, you give up your right to have a jury trial, that  
15 is, your right to have a jury decide whether or not you are  
16 guilty beyond a reasonable doubt. The jury would base their  
17 decision upon evidence which the State presents and on any  
18 evidence which you might wish to introduce. In a trial you  
19 would be presumed to be innocent and the State would have to  
20 produce evidence that would convince all twelve members of the  
21 jury that you are guilty beyond a reasonable doubt. You  
22 understand that?

23 A. Yes, sir.

24 Q. Third, you give up your right to confront and be  
25 confronted by the witnesses against you, that is, the right to

1 see, hear and cross-examine any witnesses that may be called  
2 upon -- that may be called against you during your trial and  
3 the right to subpoena and call witnesses in your own behalf.  
4 You understand that?

5 A. Yes, sir.

6 Q. Do you understand these rights I have just gone over with  
7 you?

8 A. Yes, sir.

9 Q. You understand that when you plead guilty you give up  
10 these constitutional rights?

11 A. Yes, sir.

12 Q. Is that what you wanna do?

13 A. Yes, sir.

14 Q. Do you understand that you won't get a jury trial if you  
15 plead guilty?

16 A. Yes.

17 Q. Understanding then the nature of the charge against you  
18 of homicide by child abuse and the con -- consequences of your  
19 guilty plea for which you could be sentenced from twenty (20)  
20 years to life, how do you wish to plea to this charge guilty  
21 or not guilty?

22 A. Guilty.

23 Q. Do you understand that when you plead guilty you admit  
24 the truth of the charge that has been made against you?

25 A. Yes, sir.

1 Q. Mr. Lynch, you may have defenses to this charge, I don't  
2 know whether you do or not, do you understand that if you  
3 plead guilty you will waive or give up any defenses you have  
4 to this charge?

5 A. Yes, sir.

6 Q. You may have given an incriminating statement in this  
7 case. If you plead guilty, do you understand that you waive  
8 or give up the right to contest or challenge whether such  
9 statement was given freely and voluntary in accordance with  
10 your constitutional rights?

11 A. Yes, sir.

12 Q. Did you commit this offense?

13 A. Yes, sir.

14 THE COURT: Solicitor, have there been any plea  
15 negotiations in this case?

16 A. No, sir.

17 THE COURT: Is that correct, Ms. Fullwood?

18 MS. FULLWOOD: That's correct, Your Honor.

19 EXAMINATION BY THE COURT:

20 Q. Is that your understanding, Mr. Lynch?

21 A. Yes, sir.

22 Q. Do you still wish to plead guilty?

23 A. Yes, sir.

24 Q. Has anyone promised you anything or held out any hope or  
25 reward to get you to plead guilty?

1 A. No, sir.

2 Q. Has anyone threatened you or used force to get you to  
3 plead guilty?

4 A. No, sir.

5 Q. Has anyone used any pressure or intimidation to cause you  
6 to plead guilty?

7 A. No, sir.

8 Q. Have you had enough time to make up your mind as to  
9 whether or not you want to plead guilty?

10 A. Yes, sir.

11 Q. Are you pleading guilty of your own free will and  
12 accord?

13 A. Yes, sir.

14 Q. Is it your decision to plead guilty?

15 A. Yes.

16 Q. Are you satisfied with the manner in which your lawyer  
17 has advised you and represented you?

18 A. Yes, sir.

19 Q. Have you talked with your lawyer as often and for as long  
20 as you feel necessary for her to properly represent you?

21 A. Yes, sir.

22 Q. Do you need any more time to talk with your lawyer?

23 A. No, sir.

24 Q. Have you understood your talks with your lawyer?

25 A. Yes, sir.

1 Q. Has your lawyer done everything for you you feel like she  
2 coulda done or shoulda done?

3 A. Yes.

4 Q. Has your lawyer done anything in this case that you feel  
5 like she should not have done?

6 A. No, sir.

7 Q. Are you totally and completely satisfied with your  
8 lawyer's services?

9 A. Yes, sir.

10 Q. Do you have any complaint that you wanna make about your  
11 lawyer, ---

12 A. No, sir.

13 Q. --- the solicitor ---

14 A. No, sir.

15 Q. --- or any of the police officers involved in your  
16 case?

17 A. No, sir.

18 Q. Mr. Lynch, have you understood my questions?

19 A. Yes, sir.

20 Q. Is there anything you would like to ask me about what  
21 we've just been over?

22 A. No, sir.

23 Q. Do you understand that you have a right to appeal your  
24 guilty plea and the sentence of the Court and that you or your  
25 lawyer must do so within ten days?

1 A. Yes, sir.

2 Q. And do you have any questions?

3 A. No, sir.

4 THE COURT: Alright, solicitor.

5 MS. MOORE: Thank you, Your Honor. May it please the  
6 Court. Your Honor, on Friday June 5th 2009, Victim was  
7 56 days old, just shy of 8 weeks. He was smiling, he was  
8 happy, he spent the day with his mom, his grandmother, his  
9 ants and his cousin. One of his ants took a picture of him  
10 the day before he died on that day June 6.

11 (Whereupon, counsel handed the photograph to the Court  
12 and to defense counsel.)

13 MS. MOORE: He was healthy, happy and reachin' the  
14 milestones that an 8-week-old should. On June 6th 2009  
15 Jamishe Ranger, the child's mother, ---

16 THE COURT: And tell me that name again, please.

17 MS. MOORE: Jamishe, J-A-M-I-S-H-E, ---

18 THE COURT: Okay.

19 MS. MOORE: --- Ranger.

20 THE COURT: Alright. Thank you.

21 MS. MOORE: That was Saturday, that was to be her first  
22 day back to work. She worked at Wendy's. She wasn't even  
23 supposed to go in that day but they were shorthanded and so  
24 she agreed to work since the defendant had the day off and he  
25 could keep Victim and her other children. She had three

1 other children in the home who were not the defendant's. That  
2 morning she got up, her and her mother, Shironda Ranger, who  
3 is seated on the bench, she lives seven doors down and  
4 Shironda's got a a trach tube, she's not able to drive so  
5 Jamishe got up, took her grandma -- he -- took her mother and  
6 the baby, they went to Kroger, they went to Dollar General,  
7 came back home, Jamishe got ready for work, she realized she  
8 was gonna be late, didn't wanna be late for her first day a  
9 work. She had begun feeding Victim a bottle but left the  
10 defendant with the baby and the bottle for him to finish  
11 feeding his child. She got several phone calls while on her  
12 shift, left for -- she left for work at ten minutes to eleven,  
13 Your Honor. When she left and closed the door, her baby was  
14 healthy, alive, no complaints of anything wrong with him. She  
15 left for work, gets several phone calls from her mother who  
16 was trying to get a bowl of hers that was at Jamishe's  
17 apartment but couldn't get the defendant to answer the door.  
18 She didn't know his cell phone number, although he had one, so  
19 she calls Jamishe, Call him, tell him to answer the door. She  
20 gets on the phone and tells him that. A little before then  
21 Jamishe's sister, Ashley, had taken the trash out and saw the  
22 defendant standing outside of the apartment, right outside the  
23 front door seated on an air conditioning unit with the baby in  
24 his arms, holdin' the baby on his shoulder, she couldn't see  
25 his face but his arms were danglin' down by his side. She

1 didn't think anything of it, made some small talk to the  
2 defendant, came back inside and finished doin' her hair, she  
3 was doin' her hair, it was her first day outta school.  
4 Shironda finally goes back over to get her bowl, does not see  
5 the baby, this is around two o'clock, Your Honor, goes inside,  
6 finds the defendant nervous, agitated, sweating, very jumpy.  
7 She asked where Victim is and he said, He's upstairs  
8 sleeping. About fifteen minutes later she's in the kitchen,  
9 she washed out her bowl, she's fixin' dinner for her family  
10 and there's a knock on the door. One of the girls answers the  
11 door, he comes in, he's got the baby in his arms limp, He's  
12 not breathin', he's not breathin', help and then he turns and  
13 runs back to his apartment. Shironda runs after him, grabs  
14 the baby, by this time there's such a commotion in the parking  
15 lot another neighbor comes over, she's a CNA, certified  
16 nursing assistant, she begins to administer CPR and Ashley,  
17 the baby's ant who saw him outside by the air conditioning  
18 unit with the child earlier, calls 911. The neighbor  
19 continues 911 until the paramedics arrive. The paramedics  
20 cannot get a pulse, the baby's not breathin', they immediately  
21 take the child and take him to Lexington Medical Center. At  
22 Lexington Medical Center they realize this is a devastating  
23 brain injury. They do a CAT scan and determine that he should  
24 be transported to the Pediatric Intensive Care Unit at  
25 Palmetto Health Regional Hospital. So he's prepared for

1 transport. In the meantime Detective Eric Russell with the  
2 Lexington County Sheriff's Department responds to the scene,  
3 he was a on call investigator, he meets with the defendant and  
4 asks him what happened. His first statement, Your Honor, to  
5 Detective Russell is that the baby was on the bed and he  
6 rolled off and fell on the floor. He heard thump, he goes  
7 upstairs, tries to suction his nose out, tries to breath in  
8 his mouth, blood comes out of his nose and then he runs down  
9 to the grandmother's frantic. During that conversation, af  
10 --after he gives a written statement to Detective Russell on  
11 the scene, Detective Russell realizes, he gets a phone call  
12 from Lex -- from a detective at Lexington that says injuries  
13 don't match that st -- that story. He didn't have -- he felt  
14 he didn't have probable cause to arrest him; however, they --  
15 there was an outstanding bench warrant for his arrest and he  
16 was taken into custody for that bench warrant. The baby was  
17 then transported to Palmetto Health Richland Hospital, he  
18 arrived there around 6 p.m. He was seen by Dr. Mark McDonald  
19 who is a pediatric intensive care doctor. Immediately he  
20 begins his exam. Fifty-seven day old Victim had  
21 horrible retinal hemorrhages, has no response to pain, no gag  
22 reflex. He says, and I quote, "Obviously this is a  
23 devastating brain injury that does not match the history of  
24 rolling off a mattress and box spring onto carpet plus retinal  
25 hemorrhages." Dr. McDonald woulda testified, Your Honor, that

1 this baby was basically dead when he arrived. The only reason  
2 they could not declare him dead was that he had occasional  
3 breath, he would, it's called "agonal breathing", it's just a,  
4 it's the last function of your brain stem, and their standard  
5 of care is to provide the best environment for a child and not  
6 give up on that child.

7 The next day, June 7th, Sunday, Detective Russell and  
8 Detective Glen Davis checked Mr. Lynch out of the detention  
9 center. Armed with this information they Mirandized him, have  
10 him sign the Miranda form. He never invokes his right to an  
11 attorney and agrees to talk with them about what happened and  
12 he tells the detectives that he was carrying the victim and  
13 that he slipped goin' down the stairs and dropped the baby and  
14 the baby rolled down the stairs. He said he lied 'cuz he  
15 didn't wanna get into trouble but Detective Russell armed with  
16 that information from the hospital confronts him, tells him he  
17 knows he's lyin', goes back to get the report from the  
18 hospital and that's when the defendant breaks down. He was  
19 cryin', he said in a loud voice, The baby he was cryin', he  
20 was cryin', he was cryin', I just started shaking him, this is  
21 from Detective Glen Davis. Your Honor, he gives a written  
22 statement to Detective Russell admitting that he shook him,  
23 shook him back and forth, he actually puts out his arms and  
24 shows how he's shakin' the baby (demonstrating). He laid him  
25 back on the bed. He said the baby stopped cryin', he looked

1 at him funny and he stopped cryin'. He lays him back down on  
2 the bed, goes back downstairs to get a bottle to feed him but  
3 instead of doin' that, he goes outside to smoke a cigarette  
4 first and then he goes back upstairs to check on him and  
5 that's when he finds him unresponsive, no heartbeat. Instead  
6 using his own cell phone to call 911, he runs down to the  
7 grandmother and hands him off to her. Your Honor, in addition  
8 to the exam that Dr. McDonald did, on that Sunday Dr. Susan  
9 Luberoff examines this child. She's consulted as a child  
10 abuse expert and she does her full body exam on the baby.  
11 They do X-rays on his entire body and they find a healing  
12 fracture on his clavicle and healing fracture on his wrist.  
13 The interesting part of this is he was at Lexington Medical  
14 Center for fussiness when he was 17-days-old. They did a  
15 chest X-ray, there were no broken bones. She dates them to  
16 seven to ten days old. Your Honor, State's position that's  
17 why the baby was cryin' he's got a broken wrist and a broken  
18 collarbone. Her assessment is non-accidental blunt force head  
19 trauma which will likely ultimately result in fatality, this  
20 is on June 7th 2009. The clavicle fracture represents a  
21 separate incident of trauma that the child had sustained.  
22 This is a -- not even an 8-week-old baby, he cannot inflict  
23 these injuries on himself. He couldn't even roll over. The  
24 mother said once he made one-half roll but he couldn't roll  
25 over off of a mattress. I don't know if we woulda been able

1 to get into all that at trial but I think it's important for  
2 Your Honor to have that information. The State's position  
3 this child was tortured and ultimately killed by his father  
4 Alexander Lynch.

5 Your Honor, this is a photograph of Victim on  
6 Monday June 8th taken at Palmetto Health Richland Hospital.  
7 He was declared dead at 1:18 p.m. June 8th 2009. Your Honor,  
8 the victim's mother is present, I don't know if she's capable  
9 of speaking to Your Honor but the grandmother, Shironda  
10 Ranger, would like to address Your Honor at the appropriate  
11 time.

12 THE COURT: Alright. Certainly I'll be glad to hear from  
13 Ms. Ranger.

14 MS. RANGER: Only thing I want to say ---

15 THE COURT: Tell me your, tell me your name, please.

16 MS. RANGER: Shironda Ranger.

17 THE COURT: Alright. I'll be glad to hear from you,  
18 Ms. Ranger.

19 MS. RANGER: I'm the grandmother of Victim . Well  
20 it hurts that my grandson and he's not gonna be here with us  
21 no more because he ain't have a chance to walk, talk, anything  
22 and that day if that baby got on his nerves you shoulda just  
23 brung him to me and you know that, man, I woulda took that  
24 baby and you know I love all my grandkids, you know I do and  
25 then you hurt Jamishe because you done took somethin' away

1 from her but she can't never -- well can't come back to her,  
2 me or his auntie or uncle. Your child, something that's what  
3 was yours you took away. Now I -- I'm sad because he's gone  
4 and now your life gone, both, but we just want justice that's  
5 all and that's my grandson can't come back, her son and his  
6 sisters and brothers, his sisters and that's all I want, you  
7 know, just justice. I hate your life have to go and my  
8 grandson' life gone, it's somethin' my daughter is not gonna  
9 have no more in her life, you know what I'm sayin? We got to  
10 see pictures of him and memory, that's all we got a him right  
11 now but you still gonna have your life and you still gonna  
12 breath and everything. I just -- I forgive you and I'm still  
13 gonna love you, that's all I have to say.

14 THE COURT: Thank you. Thank you for being here,  
15 Ms. Ranger. I'm sorry for the tragedy in your family. Anyone  
16 else, Solicitor?

17 MS. MOORE: No, sir, Your Honor.

18 THE COURT: Prior record?

19 MS. MOORE: Your Honor, he just has one prior minor  
20 driving offense.

21 THE COURT: Is that what the bench warrant was for?

22 MS. MOORE: Yes, sir.

23 THE COURT: Now let let me, let me track one thing  
24 though, solicitor. The -- there's no -- is there any evidence  
25 that the prior clavicle fracture or wrist fracture was

1 inflicted by Mr. Lynch?

2 MS. MOORE: There's no direct evidence to that. There is  
3 a s -- there was a statement to Shepherd Cary, the DSS  
4 treatment worker. She says, Your Honor, that he had dropped  
5 the baby on two separate occasions, that's something totally,  
6 that was totally new to the investigation. She met with him  
7 on the 10th -- the 2nd of July to close out her DSS file and  
8 he gave that explanation as far as those injuries as a  
9 possible way that that could have happened. One of the ants  
10 said that she -- they had witnessed him pick the baby up by  
11 one arm, they were always gettin' on him for not handlin' the  
12 baby correctly and being aggressive, talking aggressive to  
13 him, that kinda thing.

14 THE COURT: Is this the only child that he and ---

15 MS. MOORE: Yes, sir.

16 THE COURT: --- Jamishe have? And does Mr. Lynch have  
17 other children?

18 MS. MOORE: Not that I'm aware of.

19 THE COURT: Alright. Anything anything further,  
20 solicitor?

21 MS. MOORE: Not at this time, Your Honor.

22 THE COURT: Did they perform an autopsy?

23 MS. MOORE: Yes, sir, Dr. Janice Ross performed the  
24 autopsy.

25 THE COURT: And what were the findings?

1 MS. MOORE: Her findings matched Dr. McDonald's: anoxic  
2 encephalopathy secondary to blunt force injury to the head.  
3 She found scalp contusions, bilateral subdural hematomas,  
4 cerebral edema with partial liquidification, right optic nerve  
5 subdural hemorrhage. Her manner of death was ruled a  
6 homicide. She also found a broken clavicle.

7 THE COURT: And the -- aside from the broken clavicle,  
8 those other findings are consistent with the baby being  
9 shaken ---

10 MS. MOORE: Yes, sir.

11 THE COURT: --- and causing the traumatic brain  
12 injuries?

13 MS. MOORE: My discussion with Dr. McDonald who is the  
14 expert with children of this age, Dr. Ross has only performed  
15 three or four autopsies of shaken babies, but the telltale  
16 sign of a shaken baby is horrible retinal hemorrhages.  
17 Dr. McDonald says when you see that you know it's God's way of  
18 tellin' us what happened. He says it's like being in a car  
19 accident, it's similar to being on the back of a motorcycle  
20 goin' 70 miles an hour without a helmet and hittin' a tree,  
21 that's the type of brain injury. Detective Russell who's been  
22 in many autopsies said that when this child's brain was  
23 taken -- was removed it wasn't even -- some -- the brain is  
24 soft, it it kinda poured out a little bit.

25 THE COURT: Thank you. Thank you, solicitor. I find

1 there is a substantial factual basis for the plea, that the  
2 defendant's decision to plead guilty is free and voluntarily,  
3 knowingly and intelligently made, that he has had the advice  
4 and counsel of a very competent experienced attorney with whom  
5 he says he's well and totally satisfied, his plea of guilty to  
6 homicide by child abuse is therefore accepted.

7 THE COURT: Ms. Fullwood.

8 MS. FULLWOOD: Your Honor, there's no doubt that this is  
9 a terrible tragedy for for everybody that was involved in this  
10 child's life and loved this child and that includes Alexander  
11 here also. As he's told you he's 24-years-old. He was born  
12 to a woman from Sumter but his parents apparently split up  
13 when he was at a very young age and his father took him and he  
14 was raised by his father and stepmother down in the Miami  
15 area. He went to school through the eleventh grade. When he  
16 was 17-years-old, both of his -- both his father and his  
17 stepmother were involved in a fatal car accident so he became  
18 orphaned then and on his own. He remained in the Florida  
19 area, that's where he met Ms. Ranger, I don't know if they had  
20 family down there also or or what, but they met down in  
21 Florida and began dating. She became pregnant with Victim  
22 and moved back to South Carolina to be with her mother. Three  
23 months later he decided, ya know, this this is a wonderful  
24 thing, I'm I'm having a child, I -- I'm in the position in my  
25 life I don't have a family, this child is my family, what I

1 want to do, it's my obligation, is my my true desire to help  
2 Jamishe raise this child so he moved up here. He moved up  
3 here in October of 2008. Within two months he found himself a  
4 steady job at Publix, I think he worked about thirty-six hours  
5 a week, he moved the two of them. At first they stayed with  
6 her mother. He he got to the place within two months that  
7 they were able to get their own apartment in the same  
8 apartment complex and he and Jamishe, pregnant with Victim ,  
9 and her three daughters all lived together as a family unit in  
10 that apartment and he was happy. I know that that Ms. Ranger  
11 and her family are now saying bad things about him and saying  
12 he wasn't good with the child and that but, you know, they  
13 they talked to the police and to DSS and they had nothing but  
14 good things to say about Alex. They said he was a good  
15 father, that he was excited and happy about the baby, he  
16 carried around the the prenatal ultrasound in his pocket all  
17 the time so he could show his buddies at work the baby that  
18 was comin' to him, he helped with the children, he cooked,  
19 he -- and he and Jamishe both by by their own work and effort  
20 were raising not only that child together but the two  
21 children -- the three other children and he said he was glad  
22 to do so. He said, you know, he was -- he he was raised in a  
23 family where he was sort of the odd man out as a stepchild of  
24 his mother and he didn't want those girls to ever feel that  
25 way that he did when he was a child so he wanted to do the

1 best he could for everyone and and and keep in mind, Your  
2 Honor, he wa -- he was a very young man but he was taking on a  
3 lot and he was doing it well.

4 I -- I've represented other people in the same situation  
5 for the same sort of conduct, men and women, and I think it's  
6 always a hard thing for a person to rap their minds around the  
7 fact that just almost a split second decision, a split second  
8 action taken in anger has harmed their own child because most  
9 people in this situation dearly love their children and I --  
10 and and and that's, and that's the situation with with Alex  
11 and it's -- I think it's been hard for him to come around to  
12 the fact to to admit even to himself that he caused his  
13 child's death and he's told a lotta different stories and I  
14 ask him why and he said that he he just didn't want his  
15 child's death to be his fault. There is no evidence from  
16 anything I've seen in the discovery that this child was  
17 systematically abused by this man. Everything I've seen has  
18 been to the effect that he was a good father to this child, he  
19 worked to provide for this child, he took care of this child's  
20 physical needs except for that instant that day when  
21 everything just went so so wrong. He is a man who is  
22 genuinely remorseful. I no -- have noticed it when I first  
23 started representing him the deep sadness that he felt and,  
24 you know, last week I went to the jail and we had to meet in a  
25 meeting rooms because he needed to show -- see some pictures

1 and and things on the computer and the officer who who was  
2 escorting him took me aside later and said, You know, I was so  
3 worried about that boy when he got into this jail. She said  
4 the first few weeks he was inconsolable, he just cried and  
5 cried and cried and he was on psych watch. She said after  
6 that they moved him to a pod and the depression continued.  
7 She said it was like he just didn't care anymore. He didn't  
8 eat, he didn't take care of hygiene, it's like he was almost  
9 tryin' to kill himself just by not doing anything. I know  
10 that for a while he was being seen by mental health at the  
11 jail and it's because he feels so bad about what he did that  
12 day. Judge, he has no criminal record. Until then he was  
13 tryin' to do the things you're supposed to do when you're  
14 starting out having a family. There's no good way to resolve  
15 this, Judge, and and we all know that but I'd I'd ask you to  
16 consider his prior good conduct, the fact that this was an  
17 instantaneous action rather than systematic series of actions  
18 and the fact that he's remorseful and give him the mandatory  
19 minimum, that's -- the mandatory minimum's almost as much time  
20 as he's been alive so far and it's a substantial sentence and  
21 I think in this particular case for this particular individual  
22 it is an appropriate one.

23 THE COURT: Thank you. Thank you, Ms. Fullwood.  
24 Mr. Lynch, anything you'd like to say?

25 THE DEFENDANT: Yes, sir. I I never intentionally hurt

1 my son, never. I did everything for my son, everything. I  
2 did everything for my son, not only for my son for those girls  
3 as well. His mother can tell you I was always there. I did  
4 everything. I went to every doctor's appointment. I did  
5 everything. I don't know nothin' about South Carolina except  
6 for my job and that hospital, that's all I know. I never  
7 intentionally hurt my son. It just -- I just I tried to get  
8 away from him. I didn't intentionally physically disable my  
9 son. I didn't want none of this to happen. I didn't want  
10 this to be my fault but I didn't want this to be my fault. I  
11 love my son more than life itself. I came from Florida to  
12 take care of my son. I came to Fl -- I came from Florida to  
13 be with my son. I mean, I I don't -- I'm not sayin' what I  
14 have -- what I did was right because it's dead wrong, it's  
15 wrong, it's wrong, I'm wrong. I deserve what I'm about to get  
16 but I didn't intentionally hurt my son. I mean, you can just  
17 say I'm just crazy person, that's -- I mean, his mother know I  
18 did everything. I went through the fire for this -- for my  
19 son and that family, that I -- that it was no choice, I had no  
20 choice. It wasn't just stay in Florida and do what I, what I  
21 wanna do, that was my son, that was my son. I stopped tryin'  
22 to be the man around the block and became a man 'cuz I left my  
23 home to come to a place I know nothin' about to take care of  
24 this child. I mean, I am so sorry. I am so sorry. I hurt my  
25 my girl so bad I'm so sorry but it just, it just happened so

1 fast and I couldn't take it back and if I could I would but I  
2 can't. I didn't intentionally hurt my boy, man (crying).

3 THE COURT: Anything further you'd like to say,  
4 Mr. Lynch?

5 THE DEFENDANT: No, sir.

6 THE COURT: Ms. Fullwood?

7 MS. FULLWOOD: No, Your Honor.

8 (Pause.)

9 THE COURT: 2010-GS-32-00516, and of course before I  
10 impose sentence I would like to say I'm not taking into  
11 account the prior fracture of the clavicle or the wrist that  
12 was dated seven to ten days prior to this incident, I am only  
13 sentencing based on the event that occurred on that Saturday  
14 which would have been the 6th of June, ---

15 MS. MOORE: Yes, sir.

16 THE COURT: --- is that correct? And then Victim would  
17 have been pronounced dead on the ---.

18 MS. MOORE: The eighth.

19 THE COURT: --- 8th of June, is that correct?

20 MS. MOORE: Yes, sir.

21 THE COURT: So I'm not in any way taking into an account  
22 those prior instances for purposes of my sentencing. I  
23 believe Mr. Lynch is remorseful, that really doesn't doesn't  
24 change things. Alexander Edward Lynch having entered a plea  
25 of guilty to murder/homicide by child abuse under 16-3-85, the

1 defendant's committed to the State Department of Corrections  
2 for the term of his life. Good luck to ya, Mr. Lynch. Thank  
3 you, Ms. Fullwood, for the work that you do on such difficult  
4 cases.

5 MS. MOORE: Thank you, Your Honor.

6 MS. FULLWOOD: Thank you, Your Honor.

7 THE COURT: Good luck to you, Ms. Ranger.  
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— CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on June 7, 2010 at the time and place heretofore set forth; and that the foregoing pages numbered from 2 through 26, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

March 3, 2011.

*Margaret A. Woods*

\_\_\_\_\_  
Margaret A. Woods, Court Reporter  
in and for the State of South Carolina at Large.

**ORIGINAL**

STATE OF SOUTH CAROLINA )

In the Court of Common Pleas

FILED

County of LEXINGTON )

2011 FEB -4 12:43

341145  
ALEXANDER EDWARD LYNCH )

Full name and prison number, if any, of applicant. )

v. )

APPLICATION FOR

ETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

POST-CONVICTION RELIEF

STATE OF SOUTH CAROLINA )

Name of Respondent

COURT OF GENERAL SESSIONS )

2011CP3200473

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention LEE C.I

2. Name and location of Court which imposed sentence LEXINGTON COUNTY  
COURTHOUSE 205 EAST MAIN STREET

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 2010-GS-32-0516 MURDER/HOMICIDE By CHILD ABUSE

(b) \_\_\_\_\_

(c) \_\_\_\_\_

4. The date upon which sentence was imposed and the terms of the sentence:

(a) JUNE 7, 2010 20 YEARS TO LIFE

(b) \_\_\_\_\_

(c) \_\_\_\_\_

FILED

5. Check whether a finding of guilty was made

(a) after a plea of guilty YES

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

2011 FEB -4 12:43

STEPH A. CARRIGG  
CLERK OF COURT  
NORTH CAROLINA

6. Did you appeal from the judgment of conviction or the imposition of sentence? YES

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. SOUTH CAROLINA COURT OF APPEALS

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:

i. APPEAL DENIED

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. AUGUST 14, 2010

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. UNKNOWN

ii. \_\_\_\_\_

iii. \_\_\_\_\_

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) N/A

(b) \_\_\_\_\_

(c) \_\_\_\_\_

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) SEE ATTACHMENT 9A (LAST PAGE)

(b) \_\_\_\_\_

(c) \_\_\_\_\_

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) SEE ATTACHMENT 10A (LAST PAGE)

(b) \_\_\_\_\_

(c) \_\_\_\_\_

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

NO

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO

(d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

FILED  
2011 FEB - 4 2 43  
CATHY A. CARRIGG  
CLERK OF COURT  
JANUARY 2011

(d) the date of each such disposition:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) N/A
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? \_\_\_\_\_
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? NO

FILED  
 2011 FEB - 4 12 43  
 BETHA A. CARRIGS  
 CLERK OF COURT  
 WASHINGTON DC

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. ELIZABETH C. FULLWOOD 407 1/2 W. MAIN STREET
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(b) the proceedings at which each such attorney represented you:

- i. COURT OF GENERAL SESSIONS
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

18. State clearly the relief you seek in filing this application.

A VACATED SENTENCE, AND A NEW TRIAL

19. Are you now under sentence from any other court that you have not challenged?

NO

GETHA CARRIGE  
CLERK OF COURT  
CAIRO, MISSISSIPPI

2011 FEB - 4 2 12:43

FILED

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON ) VERIFICATION

I, ALEXANDER EDWARD LYNCH, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Alexander Lynch

Sworn to and subscribed before me  
This 3 day of Feb, 2011.

Debra Sines L.S.

Notary Public for South Carolina  
My Commission Expires 11-4-2015

2011CP 3200473

**APPLICATION TO PROCEED WITHOUT PREPAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, ALEXANDER EDWARD LYNCH, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Alexander Lynch  
Applicant

Sworn to and subscribed before me  
This 3 day of Feb, 2011.

Debra Sines L.S.

Notary Public for South Carolina  
My Commission Expires 11-4-2015

FILED  
2011 FEB -4 3 12:43  
JETH A. CARRIGE  
CLERK OF COURT  
LEXINGTON SC

## ATTACHMENT SHEET

9A APPLICANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL GRANTED BY THE SIXTH AND FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

10A COUNSEL'S CUMULATIVE ERRORS OR OMISSIONS BY FAILING TO INVESTIGATE EXCULPATORY INFORMATION IN POLICE REPORT, DEPRIVED THE DEFENDENT OF HIS DUE PROCESS RIGHT TO A FAIR TRIAL AND CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL.

2011CP3200473

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON, SC

2011 FEB - 4 2 12:44

FILED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	2011-CP-32-0473
Alexander Edward Lynch, #341145,	)	
	)	
Applicant,	)	
	)	
v.	)	<b>RETURN</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed February 4, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the June 2010 term of the Lexington County Grand Jury for Murder/Homicide by Child Abuse (2010-GS-32-00516). Elizabeth C. Fullwood, Esquire, represented the Applicant. On June 7, 2010, the Applicant pled guilty before the Honorable R. Knox McMahon and was sentenced to life imprisonment.

A timely notice of appeal was filed on Applicant's behalf. The South Carolina Court of Appeals subsequently dismissed Applicant's appeal on August 13, 2010. Applicant's appeal was dismissed because Applicant argued he is innocent of the crime of which he was convicted; however, Applicant failed to show this argument was raised to or ruled upon by the circuit court judge. Remittitur was issued on August 31, 2010.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, and the records from Applicant's prior appeal proceeding. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
  - a. Sixth and Fourteenth Amendment Violations with respect to Applicant's direct appeal
  - b. "Counsel's cumulative errors or omissions by failing to investigate exculpatory information in police report"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

## III.

Respondent interprets all of Applicant's claims as being claims of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

KAELOE E. MAY  
Assistant Attorney General

By: Kaelon E. May  
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

August 8, 2011.

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

ALEXANDER LYNCH,  
APPLICANT,

2011-CP-32-0473

-vs-

TRANSCRIPT

STATE OF SOUTH CAROLINA,  
RESPONDENT.

AUGUST 14, 2012.  
LEXINGTON, S. C.

BEFORE:

HONORABLE, W. JEFFREY YOUNG, JUDGE.

APPEARANCES:

DANIEL D. KIENKER  
Columbia, S. C.  
Attorney for Applicant.

KAELOE E. MAY, ESQUIRE  
S. C. Attorney General's Office  
Attorney for Respondent.

RECORDED BY:  
L. COCONUT PANTSARI  
COURT REPORTER.

TRANSCRIBED BY:  
CAROLE R. SHEALY  
COURT REPORTER.

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WITNESSES

DIRECT

CROSS

FOR PLAINTIFF:

1. Alexander Lynch

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FOR DEFENDANT:

1. Elizabeth Fullwood

12

18

1 (WHEREUPON, THE FOLLOWING PROCEEDINGS ARE  
2 REPORTED ON AUGUST 14, 2012.)

3 THE COURT: All right. Which will be our next  
4 case?

5 MS. MAY: Your Honor, the next case I would like  
6 to call is Alexander Lynch vs. the State of South Carolina.  
7 It's case number 2011-CP-32-0473. Mr. Lynch was indicted  
8 in June of 2010 for homicide by child abuse. He pled  
9 guilty to the charge on June 7, 2010, before Judge McMahon  
10 and received a life sentence. He filed an appeal which the  
11 South Carolina Court of Appeals dismissed on August 13<sup>th</sup> of  
12 2010. And I will let Mr. Kienker---

13 MR. KIENKER: Kienker.

14 MS. MAY: ---Kienker--excuse me; I apologize--  
15 expand on his claims.

16 THE COURT: All right. Mr. Kienker?

17 MR. KIENKER: Good morning, Your Honor. May it  
18 please the Court.

19 THE COURT: Yes, sir.

20 MR. KIENKER: I've been here--- I am here court  
21 appointed to represent Mr. Alexander Edward Lynch on his  
22 application for post-conviction relief. He's asking for  
23 relief based upon his assertion that he was never advised,  
24 during his consultation with his attorney, that he was  
25 entitled to a *Jackson v. Denno* hearing and that his

ALEXANDER LYNCH: DIRECT EXAMINATION BY MR. KIENKER

4

1 statement might have been suppressed or would've been  
2 challenged for admissibility.

3 THE COURT: All right. Are you ready to call  
4 your first witness?

5 MR. KIENKER: I am, Your Honor. I would call Mr.  
6 Lynch to the stand.

7 THE COURT: Mr. Lynch, come forward and be sworn.

8 WHEREUPON, ALEXANDER LYNCH, HAVING  
9 BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

10 CLERK: Have a seat and state your name for the  
11 record, please. State your name, sir,

12 THE WITNESS: Alexander Lynch.

13 MR. KIENKER: May it please the Court.

14 THE COURT: Yes, sir.

15 DIRECT EXAMINATION BY MR. KIENKER:

16 Q. Mr. Lynch, let me remind you again to please speak up  
17 so the court reporter and everybody else can hear your  
18 statements.

19 A. Okay.

20 Q. You stated your full name for the record. Where are  
21 you currently incarcerated, Mr. Lynch.

22 A. Lee County Correctional Facility.

23 Q. And you were convicted on June 7<sup>th</sup>, 2010. Is that  
24 correct?

25 A. Yes, sir.

ALEXANDER LYNCH: DIRECT EXAMINATION BY MR. KIENKER

5

- 1 Q. Of homicide by child abuse?
- 2 A. Yes, sir.
- 3 Q. And what sentence did you receive?
- 4 A. A life sentence.
- 5 Q. And who was your defense attorney?
- 6 A. Elizabeth Fullwood.
- 7 Q. Okay. Now, after your arrest, were you incarcerated
- 8 here locally---
- 9 A. Yes.
- 10 Q. ---at the Lexington County Detention Center?
- 11 A. Lexington County Detention Center, yes, sir.
- 12 Q. Okay. And were you there the entire time up until the
- 13 time that you pled guilty?
- 14 A. Yes, sir.
- 15 Q. And, while you were at the Lexington County Detention
- 16 Center, were you visited by Ms. Fullwood, your defense
- 17 attorney?
- 18 A. Yes, sir.
- 19 Q. And how many times? Do you recall?
- 20 A. Three, three, three times.
- 21 Q. Okay. Do you recall what happened when she first came
- 22 down to visit you?
- 23 A. Yes, sir. She came to the Detention Center to meet
- 24 with me. She greeted me and let me know she was my
- 25 attorney and she was going to be representing me. And

1           that was about it.

2 Q.   That was it? Okay. On her second visit, tell me what  
3           you all discussed or what happened during that visit?

4 A.   I was mailed my motion of discovery, and she came to  
5           talk to me about the trial and the things in our  
6           motion of discovery basically.

7 Q.   Okay. What--- You said you talked about the trial?

8 A.   Yes.

9 Q.   Did you tell her that you wanted to go to trial?

10 A.   Yes, sir.

11 Q.   Okay. Was that pretty much all you discussed?

12 A.   Yes, sir.

13 Q.   Did she concur with your request to go to trial?

14 A.   Yes, sir.

15 Q.   You did not want to plead?

16 A.   No, sir.

17 Q.   Okay. Now, after your arrest, did you have the  
18           opportunity to give a statement to law enforcement?

19 A.   Yes.

20 Q.   Okay. And this was shortly after your arrest, I  
21           assume?

22 A.   Yes.

23 Q.   Were you advised of your *Miranda* rights?

24 A.   Yes, sir.

25 Q.   Did you acknowledge to the detectives who gave you,

ALEXANDER LYNCH: DIRECT EXAMINATION BY MR. KIENKER

7

1           who asked for your statement that you understood those  
2           rights?

3   A.    Yes, sir.

4   Q.    And would you briefly tell the Court what happened  
5           after you or during the time that you gave your  
6           statement?

7   A.    Well, after they gave me--- After they Mirandized me,  
8           I signed a *Miranda* statement saying that I understand  
9           my rights; and then they proceeded to interrogate me.  
10          Upon them interrogating me for a little while, I  
11          invoked my right. I told them I didn't want to talk  
12          anymore, I didn't want to be interrogated. After  
13          I--- After I had invoked my right, the detective,  
14          he told me that I have to tell them what they want  
15          before they'll allow me to go back to my room. So I  
16          just told them what they wanted. I just made a  
17          statement.

18   Q.    How did you feel at this time?

19   A.    I felt--- I felt like it was no way out. I felt  
20          depressed. I just wrote the statement so they could  
21          take me back to my room.

22   Q.    Is that why you continued to make a statement?

23   A.    Yes, sir.

24   Q.    Now, did you and Ms. Fullwood, at any time, did she  
25          discuss the statement that you gave?

1 A. No, sir.

2 Q. Did she ask you or inquire about the circumstances  
3 under which you gave the statement?

4 A. No, sir.

5 Q. Did she go over the rights that you had acknowledged  
6 when you gave your statement to law enforcement?

7 A. No, sir.

8 Q. Okay. Did she indicate to you that you, if you went  
9 to trial, you had a right to have that statement  
10 examined by the Court for its admissibility?

11 A. No, sir.

12 Q. Okay. Did she also talk to you about your right to  
13 testify on your own behalf if you went to trial?

14 A. Yes, sir.

15 Q. Okay. Now, you said there were three visits by Ms.  
16 Fullwood. What happened on the third visit when she  
17 came to see you?

18 A. Well, the third visit, she advised me that we was  
19 going to go to trial and that I would have to take the  
20 stand and tell my side of the story, and I agreed to  
21 it.

22 Q. Okay. So what was your expectation after Ms. Fullwood  
23 left you after her third visit? What was your  
24 expectation on how you were going to resolve this  
25 case?

ALEXANDER LYNCH: DIRECT EXAMINATION BY MR. KIENKER

9

1 A. I was expecting to go to trial.

2 Q. How long was it from the time that she visited you the  
3 third time until you actually came to court that day?

4 A. About a week.

5 Q. About a week. Okay. And it was still your  
6 expectation when you came to court---

7 A. Yes, sir.

8 Q. ---that you were going to go to trial?

9 A. Yes, sir.

10 Q. Okay. Tell me what happened when you, on that day  
11 when you were brought over here to plead guilty or you  
12 thought to go to trial?

13 A. When they brought me over to, to go to the trial, I  
14 was sitting in the holding cell. I got dressed and  
15 everything. Ms. Fullwood came to visit me, and she  
16 told me that it would be in my best--- She gave me the  
17 advice that it would be in my best interest to plead  
18 guilty because of the statement that I made.

19 Q. And you pled guilty?

20 A. Yes, sir.

21 Q. Why did you plead guilty when--- Let me ask--- Let me  
22 back up. You were--- Before you pled guilty, the  
23 Court went over all the rights with you. Is that  
24 correct?

25 A. Yes, sir.

- 1 Q. And you indicated that you understood all those  
2 rights?
- 3 A. Yes, sir.
- 4 Q. Why did you plead guilty if you wanted to go to  
5 trial?
- 6 A. Well, I pled guilty because I was never advised that,  
7 if I was to go to trial, I would have a hearing  
8 pursuant to *Jackson v. Denno* to suppress my statement  
9 and my--- I took my counsel's advice that, if I was to  
10 plead, I would get a lesser time because of the  
11 statement that I made. So I was prejudiced in not  
12 knowing that, if I would go to trial, I could have  
13 this hearing to suppress my statement, which was---  
14 The statement was the only reason why I took the plea  
15 in the first place.
- 16 Q. Mr. Lynch, I'm going to ask you, is there anything  
17 else you want to add or tell the Court about your  
18 sentence and what happened?
- 19 A. No, not really. I just wanted to have them to vacate  
20 my plea and have a new trial because of my counsel's  
21 errors in not advising me of the trial hearing  
22 pursuant to *Jackson v. Denno* about the admissibility  
23 of my statement.
- 24 Q. Let me conclude by asking you, Mr. Lynch, have I done  
25 everything that you have asked me to do?

ALEXANDER LYNCH: CROSS EXAMINATION BY MS. MAY

11

1 A. Yes, sir.

2 Q. Are you satisfied with my services as your attorney?

3 A. Yes, sir.

4 MR. KIENKER: No further questions, Your Honor?

5 THE COURT: Thank you. Ms. May?

6 MS. MAY: May it please the Court, Your Honor.

7 CROSS EXAMINATION BY MS. MAY:

8 Q. Mr. Lynch, do you recall at your guilty plea the Judge  
9 advising you that, if you gave an incriminating  
10 statement, that a guilty plea would waive your right  
11 to challenge that statement?

12 A. Excuse me. Would repeat that again?

13 MS. MAY: May I approach, Your Honor?

14 THE COURT: You may.

15 Q. Mr. Lynch, if you would read, starting at line 6 about  
16 four lines down, just to refresh your memory?

17 A. You may have--- You may have given an incriminating  
18 statement in this case. When you plead guilty, do you  
19 understand that you waive or give up your right to  
20 contest or challenge whether such statement was given  
21 freely and voluntarily in accordance with your  
22 constitutional rights.

23 Q. And you indicated to the Court that you wished to give  
24 up your right to challenge any statements. Correct?

25 A. Yes.

1 Q. I have no further questions. Thank you.

2 THE COURT: Any redirect?

3 MR. KIENKER: No, Your Honor.

4 THE COURT: Thank you. You may step down.

5 (Witness leaves the witness stand.)

6 THE COURT: All right. Do you have any other  
7 witnesses?

8 MR. KIENKER: No, I don't, Your Honor.

9 THE COURT: All right. Thank you. Ms. May?

10 MS. MAY: May it please the Court, Your Honor---

11 THE COURT: Yes, ma'am.

12 MS. MAY: ---the State would like to call Ms.  
13 Fullwood.

14 THE COURT: Please come forward, Ms. Fullwood.

15 WHEREUPON, ELIZABETH FULLWOOD,

16 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

17 CLERK: Have a seat and state your name for the  
18 record.

19 THE WITNESS: Elizabeth Fullwood.

20 DIRECT EXAMINATION BY MS. MAY:

21 Q. Ms. Fullwood, were you appointed to represent Mr.  
22 Lynch?

23 A. I was.

24 Q. And do you recall how many times you were able to meet  
25 with him?

1 A. From my notes, it looks like I met with him five  
2 times.

3 Q. And, during those times that y'all met, did you  
4 discuss the elements of the charges and what the State  
5 would have to prove?

6 A. Yes. According to my notes, the first time I met with  
7 him was on July 1<sup>st</sup> of 2009. At that time, we went  
8 over the elements of the offense, the penalties, the  
9 fact that it was a most serious offense, a no-parole  
10 offense, a violent offense. We discussed his rights  
11 as far as trial, that either he could plead guilty or  
12 not guilty, and the procedures that would take place  
13 if he did choose to go to trial. He told me at that  
14 time that he had given two statements to the police,  
15 one at the scene of the home where the incident  
16 occurred and the second time when he was in jail. He  
17 gave me a very detailed account at that time of his  
18 version of what had occurred. I inquired into whether  
19 or not he had any history of mental illness or  
20 substance abuse, got some facts about the background  
21 of the deceased child and his relationship with the  
22 child's mother and some background information just  
23 about him, and I cautioned him not to discuss the  
24 facts of this case with the other inmates.

25 Q. And did you file any discovery motions?

1 A. I did.

2 Q. And do you recall, just briefly, what the discovery  
3 materials consisted of?

4 A. It was police incident reports, it was hospital  
5 records, it was an autopsy report. I also have in my  
6 files just a voluminous amount of medical records. I  
7 don't know if they were provided during the discovery  
8 process or whether we got them as a part of our  
9 independent investigation. I also have the D.S.S.  
10 records for the child and for that household.

11 Q. And you just referenced in your independent  
12 investigation. Did that entail just looking into  
13 D.S.S. or was that something in addition?

14 A. Well, looking at the child's medical records and  
15 looking at the D.S.S. records. I interviewed the  
16 pathologist in the case. I made a lot of inquiries to  
17 other lawyers and by reading about the shaken baby  
18 syndrome and things of that nature.

19 Q. And you reviewed the discovery materials with Mr.  
20 Lynch?

21 A. Yes, I did. We reviewed those materials on November  
22 25<sup>th</sup>, 2009.

23 Q. And, at that time, did you also review the materials  
24 that you got from your independent investigation?

25 A. Probably. I don't have that in my notes. But, if we

1 had that material then, I would've told him anything  
2 significant that I discovered.

3 Q.. And, with regard to the three statements that Mr.  
4 Lynch made, did you review each of those statements  
5 individually with Mr. Lynch?

6 A. I don't have any independent recollection. We did  
7 though discuss the fact that he had made the  
8 statements.

9 Q. And did you discuss challenging those statements and  
10 the likelihood of success in challenging them?

11 A. Well, as a part of discussing trial procedures, I  
12 always explain that, between the time we pick the jury  
13 and the time the jury hears anything in the case, we  
14 challenge, raise challenges to evidence and that's  
15 when we would challenge the statement if there were  
16 any search issues, which really weren't present in  
17 this case although there was a search warrant. So I  
18 did explain that you do challenge things such as  
19 statements before you go to trial.

20 Q. And did you discuss any possible defenses? I guess  
21 y'all were planning to go to trial. Is that correct?

22 A. That's right.

23 Q. Okay. And did you discuss possible defenses as a part  
24 of trial strategy?

25 A. Yes, we did.

- 1 Q. And do you recall what those were, what y'all  
2 discussed?
- 3 A. Accident.
- 4 Q. Okay. And did Mr. Lynch provide you with any  
5 potential witnesses or leads for further  
6 investigation?
- 7 A. No. The only other further type of investigation  
8 would be just documentary type of evidence.
- 9 Q. And, based on your discussions with Mr. Lynch  
10 specifically about the statements, did he seem to  
11 understand those discussions and his rights?
- 12 A. Yes. There was no question as to his competence.
- 13 Q. And do you feel that you had sufficient time to  
14 prepare for this case?
- 15 A. Yes.
- 16 Q. Were there any plea negotiations?
- 17 A. No plea offer was made.
- 18 Q. Can you discuss just leading up--- Prior to the plea,  
19 I believe Mr. Lynch described that he was under the  
20 impression he was going to trial and then was advised  
21 to plead?
- 22 A. Well, one of the problems that I had is his version of  
23 what the accident was kept changing and, when he was  
24 brought to court on the day of his plea, he told me,  
25 you need to know something. And what that something

1           was is he said he had hurt the baby; and, by that, I  
2           don't mean accidentally. He said that he had done  
3           something that resulted in the injury.

4 Q.   And, at that point, did you discuss obviously pleading  
5           guilty versus going to trial and the benefits and  
6           drawbacks?

7 A.   Well, I mean, if he was going to defend on the basis  
8           of accident, it would've required his truthful  
9           testimony; and, if his truthful testimony was that he  
10          had committed the offense, of course, it would seem  
11          that, at the time, his best option would be to plead,  
12          throw himself on the mercy of Court and try to  
13          persuade the Judge to extend him some degree of mercy.

14 Q.   And you presented a very extensive mitigation at the  
15          plea. Do you recall conducting research for that or  
16          did you gather that information from your discussions  
17          with Mr. Lynch?

18 A.   I'm not sure I understand your question.

19 Q.   Sorry. Did you prepare--- In your mitigation, did you  
20          prepare that with Mr. Lynch, what you were going to  
21          present to the Court?

22 A.   Well, certainly, I would've discussed with him what  
23          the mitigation was. In fact, I think, in every  
24          discussion we had, we talked some about his  
25          background, the good things about him, the things he

1 had done correct in life and things of that nature.

2 So a lot of it was based on what he had told me, and

3 some was gleaned from different records that had put

4 him in a favorable light.

5 Q. Is there anything else that you would like to inform  
6 the Court during your presentation?

7 A. That's it.

8 Q. I have no further questions. Thank you.

9 THE COURT: Mr. Kienker?

10 MR. KIENKER: Thank you, Your Honor. May it  
11 please the Court.

12 **CROSS EXAMINATION BY MR. KIENKER:**

13 Q. Ms. Fullwood, in your discussions and meetings with  
14 Mr. Lynch, you mentioned that you discussed the  
15 statements he gave?

16 A. Yes.

17 Q. Did he ever tell you, at any time, that he felt  
18 coerced giving that statement?

19 A. No, he did not.

20 Q. Did you--- I know you said you went over his rights  
21 with him and that he waived them when he gave that  
22 statement. Did you also have a chance to speak with  
23 the investigators about the statement that they asked  
24 him to make and how that went?

25 A. No, I did not specifically discuss that with the case

1 officer.

2 Q. I get the sense that, when he was brought over here  
3 the day that he ended up pleading guilty, that it was  
4 still his expectation that he wanted a trial. Is that  
5 correct? That he wanted to tell his side of the  
6 story?

7 A. No, I don't think so. I don't think he--- I don't  
8 think--- According to some of the notes I had, and  
9 this would be what he told me in March, specifically  
10 on March 1<sup>st</sup> of 2010, is that he was open to what I put  
11 in quotes, good plea, because he knows he's going to  
12 get time but he doesn't want to plead straight up to  
13 20 years to life, that he was content to stay at the  
14 County Jail until something better was offered. So I  
15 think he didn't really want a trial but he just wanted  
16 a better plea offer.

17 Q. Do you feel or do you think--- Did you--- Let me  
18 rephrase it. We all know there's that line that one  
19 might cross as a defense attorney where they are  
20 making a decision for a client instead of him making  
21 the ultimate decisions.

22 A. Yes.

23 Q. What is your assessment of that day?

24 A. It was his decision. I mean---

25 Q. Are you sure of that?

1 A. Well, as sure as I can be from knowing things and from  
2 what I can observe, you know, yeah. I don't think---  
3 I certainly don't think I overbore his will, and he  
4 knew that I was there ready for trial if that's how he  
5 wanted to go.

6 Q. Did he ever, at any time during your meetings with  
7 him, tell you that he wanted to tell the Court in his  
8 words his side of the story?

9 A. I don't recall him saying that in those words. He  
10 understood that, if he had, were to have any chance of  
11 succeeding at trial, he was going to need to testify.

12 Q. Okay. And what did you advise him on that? Were you  
13 okay with him testifying had he decided to go to  
14 trial?

15 A. Well, yes. I mean, he would've needed to to have some  
16 chance of prevailing.

17 MR. KIENKER: Your Honor, I don't believe I have  
18 any further questions.

19 THE COURT: All right. Thank you.

20 MR. KIENKER: Thank you, Your Honor.

21 THE COURT: Ms. Fullwood, I do have a question.

22 A. Yes, sir.

23 THE COURT: The statements that he had made---

24 A. Yes, sir.

25 THE COURT: ---did you review those to see if

ELIZABETH FULLWOOD: EXAMINATION BY THE COURT

21

1 there was a defense to those.

2 A. As far as the *Jackson v. Denno* challenge?

3 THE COURT: Right.

4 A. Yes, sir, I did.

5 THE COURT: And he had been Mirandized when he  
6 made those statements?

7 A. That's right, and he never told me that pressure had  
8 been brought to bear on him to make him give the  
9 statements.

10 THE COURT: In fact, he also told the Court that.  
11 Is that right?

12 A. That's right.

13 THE COURT: All right. Thank you. Any other  
14 questions, Mr. Kienker?

15 MR. KIENKER: No questions, Your Honor.

16 THE COURT: Thank you. Ms. May?

17 MS. MAY: Nothing further from the State, Your  
18 Honor.

19 THE COURT: All right. I'm going to read over  
20 the transcript again, and I'm going to take this under  
21 advisement. I'll let you know within 15 days my ruling.

22 WHEREUPON, HEARING CONCLUDED.

23

24

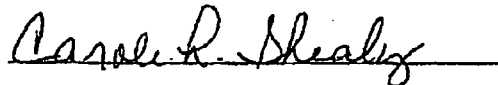
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## C E R T I F I C A T E

1  
2 I, the undersigned CAROLE R. SHEALY, Official  
3 Court Reporter for the Eleventh Judicial Circuit of the  
4 State of South Carolina, do hereby certify that the  
5 foregoing is a true, accurate and complete transcript of  
6 record of all the proceedings had and evidence introduced  
7 in the trial of the captioned cause, as recorded by L.  
8 Coconut Pantsari, relative to appeal, in the Court of  
9 Common Pleas for Lexington County, South Carolina, on the  
10 14<sup>th</sup> day of August, 2012.

11 I do further certify that I am neither of kin,  
12 counsel or interest to any party.

13  
14  
15 October 29, 2012.

16  
17 

18 CAROLE R. SHEALY  
19  
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**ORIGINAL**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LEXINGTON )  
 )  
 Alexander Lynch, )  
 S.C.D.C. No. 341145 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

Case No. 2011-CP-32-0473

**ORDER OF DISMISSAL**

FILED  
 2013 JUN 19 A 11:08  
 BETTE A. CAMPBELL  
 CLERK OF COURT  
 LEXINGTON, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 4, 2011. Respondent made its Return on or about August 8, 2011. An evidentiary hearing was convened on ~~June 8, 2009~~ at the Lexington County Courthouse. Applicant was present at the hearing and was represented by Daniel E. Kienker, Esquire. Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying was Elizabeth C. Fullwood, Esquire. This Court had before it the records of the Lexington County Clerk of Court, the guilty plea transcript, the appellate records, and Applicant's records from the South Carolina Department of Corrections.

**I. PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the June 2010 term of the Lexington County Grand Jury for Murder/Homicide by Child Abuse (2010-GS-32-00516). Elizabeth C. Fullwood, Esquire, represented the Applicant.

A handwritten signature in black ink, appearing to be 'WJF', is located at the bottom right of the page.

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On June 7, 2010, Applicant pled guilty before the Honorable R. Knox McMahon and was sentenced to life imprisonment.

A timely notice of appeal was filed on Applicant's behalf. The South Carolina Court of Appeals subsequently dismissed Applicant's appeal on August 13, 2010. Applicant's appeal was dismissed because Applicant argued he is innocent of the crime of which he was convicted; however, Applicant failed to show this argument was raised to or ruled upon by the circuit court judge. Remittitur was issued on August 31, 2010.

At the August 14, 2012 evidentiary hearing, Applicant moved forward on one allegation of ineffective assistance of counsel: (1) failure to investigate the admissibility of Applicant's incriminating statements made to law enforcement in advising him to plead guilty.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

### Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington,

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466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

*Failure to Investigate*

At the PCR hearing, Applicant asserts that counsel failed to adequately investigate his case. Applicant stated that he met with plea counsel three times. Applicant stated that discovery was mailed to him. Applicant stated that plea counsel discussed discovery upon their second consultation. Applicant stated that he always wanted to proceed to trial. Applicant stated that

**ORIGINAL**

plea counsel discussed trial strategy upon the third consultation. Applicant stated that plea counsel advised Applicant to testify in his own defense at trial.

A week after the last consultation, Applicant stated that he was brought to court where plea counsel advised him to enter a guilty plea. Applicant stated that plea counsel's advice was based on the strength of the State's case, particularly in regards to the inculpatory statements Applicant made to law enforcement after his arrest. Applicant stated that plea counsel never discussed the statements in question with him. Applicant further stated that plea counsel never explained to him that she could make a motion in-limine to suppress his statements.

Applicant stated that before he was interrogated, he waived his right to remain silent. Applicant stated that he understood the waiver and signed a Miranda statement to that effect. Yet, Applicant asserted that he revoked his waiver during the interrogation. Applicant stated that the police officers would not end the interrogation until he told them what they wanted to hear. Applicant stated that because Applicant was depressed and just wanted to end the interrogation and return to his cell, he complied.

Applicant requested this Court to vacate his guilty plea because of plea counsel's failure to investigate the admissibility of his post-arrest incriminating statements. However, upon cross-examination the Applicant did state that the plea court did advise him that he was waiving his right to contest incriminating statements made during plea colloquy.

At the PCR hearing, plea counsel testified that she discussed the incriminating statements Applicant made to the police on the first consultation. Plea counsel stated that she fully inquired to Applicant's version of the facts of the offense. Applicant gave a detailed accounting of his version of the offense to plea counsel. Plea counsel stated that Applicant told her that he gave two incriminating statements to law enforcement. One statement was given at the scene of the

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offense and the other was made in custody.

Plea counsel testified that upon the second consultation, plea counsel reviewed discovery and discussed her investigation of the case with Applicant. Plea counsel reviewed the social history and the medical reports of the child-victim. Plea counsel further interviewed the pathologist and researched the shaken-baby syndrome defense. Plea counsel stated that Applicant did not provide her with any potential defenses or witnesses. Plea counsel stated that her defense at trial would have been that the infant's death was accidentally caused by Applicant. Plea counsel investigated the incriminating statements that Applicant made to law enforcement to determine admissibility. Plea counsel advised Applicant regarding the procedure at trial to attack the admissibility of his statements. However, plea counsel stated that Applicant never told her that the second incriminating statement that he gave was the product of coercion.

Plea counsel testified that she did not enter plea negotiations with the State. She only advised Applicant to plead guilty after he told her the he intentionally caused the infant-victim's death. Plea counsel stated Applicant had been receptive to entering a guilty plea. Plea counsel stated that it was Applicant's decision to plead guilty and that she was prepared to proceed to trial if he chose not to plead guilty.

This Court finds Applicant's allegation that plea counsel was ineffective for failing to investigate and advise Applicant regarding the admissibility of his incriminating statements is without merit. This Court finds plea counsel's testimony to be credible. This Court finds plea counsel diligently investigated Applicant's case and made reasonable inquiries into possible defenses. This Court finds plea counsel reasonably investigated Applicant's incriminating statements made pursuant to a valid Miranda waiver. Furthermore, Applicant entered his guilty plea and waived his right against self-incrimination without notifying the guilty plea court of the

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alleged coercion he alleges now. (Tr. 5, Lines 7-13).

Furthermore, this Court finds Applicant's allegation is entirely based on speculation. This Court finds that Applicant failed to present any evidence that showed his second incriminating statement would have been inadmissible at trial. Applicant did not produce the statement nor did he present evidence to attack its admissibility. Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998).

Therefore, Applicant fails to prove plea counsel was ineffective. An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

Additionally, this Court finds Applicant failed to establish any resulting prejudice from counsel's alleged error. Applicant never alleged that his first incriminating statement was inadmissible. Thus, the alleged error at best would have proved harmless. Therefore this claim is denied and dismissed.

#### Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is

**ORIGINAL**

invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Cl. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

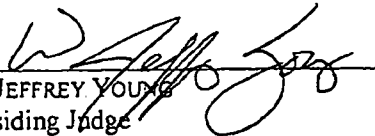
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2013 JUN 14 AM 11:00  
DEPT. OF COURT  
CLERK OF COURT  
CONELSON, SC

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his Application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 6 day of June, 2013

  
W. JEFFREY YOUNG  
Presiding Judge  
Eleventh Judicial Circuit

Sumter, South Carolina.



(b) \_\_\_\_\_  
(c) \_\_\_\_\_

5. The date upon which sentence was imposed and the terms of the sentence:

(a) JUNE 7, 2010 20 YEARS TO LIFE

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(b) \_\_\_\_\_ 2012 OCT 31 P 2:55

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

(a) after a plea of guilty YES

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

i. SOUTH CAROLINA COURT OF APPEALS

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:

i. APPEAL DENIED

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. AUGUST 14, 2010

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. UNKNOWN

ii. \_\_\_\_\_

iii. \_\_\_\_\_

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) \_\_\_\_\_

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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2012 OCT 31 P 2:55

- (a) SEE ATTACHMENT 10 A (LAST PAGE)
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) SEE ATTACHMENT 11 A (LAST PAGE)
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? YES
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered Ayes to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
  - i. POST-CONVICTION RELIEF
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. LEXINGTON COUNTY CLERK OF COURT 205 EASTMAN ST
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

FILED

i. POST-CONVICTION RELIEF DENIED

ii. \_\_\_\_\_

2012 OCT 31 P 02:56

iii. \_\_\_\_\_

iv. \_\_\_\_\_

BETH A. CARRIGG  
CLERK OF COURT  
COLUMBIA SC

(d) the date of each such disposition:

i. SEPTEMBER 17, 2012

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. UNKNOWN

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

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- (a) SEE ATTACHMENT 16 (LAST PAGE) 2012 OCT 31 P 12:56
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? \_\_\_\_\_
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? \_\_\_\_\_
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?  
YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

18. If you answered Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. DANSEL D. KENNER 1527 BRANDINE STREET  
COLUMBIA, SOUTH CAROLINA 29201
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. POST-CONVICTION RELIEF
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application:

A NEW POST-CONVICTION RELIEF HEARING

FILED

20. Are you now under sentence from any other court that you have not challenged?

NO

2012 OCT 31 P 2:56

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

Revised 3/2003

2012CP3204389

STATE OF SOUTH CAROLINA )  
 )  
County of LEXINGTON )

VERIFICATION

I, ALEXANDER EDWARD LYNCH, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Alexander Lynch  
Alexander Lynch

SWORN to and subscribed before me this 29  
day of Oct., 2012.

Debra Jones (L.S.)  
Notary Public

My Commission Expires: 11-4-2015

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

2012 OCT 31 P 2:56

FILED

**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, ALEXANDER EDWARD LYNCH, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Alexander Lynch  
Applicant

SWORN or affirmed to and subscribed before me this

29 day of Oct. 2012.

Delma Sims  
Notary Public

My Commission Expires: 11-4-2015-2012CP3204389

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

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ATTACHMENT SHEET

2012CP 3204389

10A APPLICANT WAS DEEMED AFFECTED PERSONNEL OF PCR COUNCIL AND WAS REQUIRED TO FILE AN APPEAL FOLLOWING THE DENIAL OF ANY FURTHER CONSIDERATION TO RE-ELECT TO OFFICE.

11A PCR COUNCIL WAS INSTRUCTED AND FAILED TO FILE AN APPEAL FOLLOWING THE DENIAL OF ANY FURTHER CONSIDERATION TO RE-ELECT TO OFFICE.

16A THE GRAND IS INTERESTED IN RECEIVING THE RECORDS OF THE PCR COUNCIL. THE GRAND HAS REQUESTED THAT THE RECORDS BE PROVIDED TO IT. THE RECORDS ARE BEING PROVIDED TO IT. THE RECORDS ARE BEING PROVIDED TO IT. THE RECORDS ARE BEING PROVIDED TO IT.

BETH A. CARRIG  
CLERK OF COURT  
LEXINGTON SC

2017 OCT 31 12 05 56

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STATE OF SOUTH CAROLINA )  
 COUNTY OF LEXINGTON )  
 )  
 )  
 Alexander Edward Lynch, )  
 S.C.D.C. No. 341145, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

---

IN THE COURT OF COMMON PLEAS  
 ELEVENTH JUDICIAL CIRCUIT

2012-CP-32-4389

**RETURN AND PARTIAL  
 MOTION TO DISMISS**

In response to the post-conviction relief (PCR) application that Alexander Edward Lynch (Applicant) filed October 31, 2012, the State (Respondent) would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted during the June 2010 term of the Lexington County Grand Jury for murder/homicide by child abuse (2010-GS-32-0516). Elizabeth C. Fullwood, Esquire, represented the Applicant. On June 7, 2010, Applicant appeared before the Honorable R. Knox McMahon and pled guilty. Judge McMahon sentenced Applicant to life imprisonment.

A timely notice of appeal was filed on Applicant's behalf. In an order dated August 13, 2010, the South Carolina Court of Appeals dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, for failure to make a showing that his argument was raised to or ruled upon by the circuit court judge. The Remittitur was returned on August 31, 2010.

**First PCR Application: 2011-CP-32-0473**

Applicant filed his first PCR application on February 4, 2011, alleging the following grounds for relief:

1. Ineffective assistance of trial counsel:
  - a. Sixth and Fourteenth Amendment Violations with respect to Applicant's direct appeal; and
  - b. "Counsel's cumulative errors or omissions by failing to investigate exculpatory information in police report"

An evidentiary hearing was held on August 14, 2012. Daniel E. Kienker, Esquire, represented Applicant. The Honorable W. Jeffrey Young denied and dismissed the application with prejudice on June 6, 2013. Applicant did not appeal Judge Young's order.

II.

While his first application was still pending, Applicant filed his *second* and current application on October 31, 2012, alleging the following grounds for relief:

1. Ineffective assistance of PCR Counsel; specifically
  - a. PCR Counsel was ineffective in failing to file an appeal following the denial of application.

For the purpose of this return, Respondent incorporates the Lexington County Clerk of Court's records regarding the subject guilty plea, appellate records, South Carolina Department of Corrections records, and Applicant's previous and current PCR records. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation is without merit. Applicant alleges ineffective assistance of counsel in that he was denied the right to an appeal from the denial of his first PCR application. "The right to seek appellate review of the denial of PCR is expressly authorized by state law." Austin v. State, 305 S.C. 453, 454; 409 S.E.2d 395, 396 (1991); S.C. Code Ann. § 17-27-100 (2014). A PCR applicant is entitled to an Austin appeal if the PCR judge

affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999). However, an applicant may waive the right to appeal by making a “knowing and intelligent decision not to pursue the appeal.” Simuel v. State, 390 S.C. 267, 271, 701 S.E.2d 738, 739-40 (2010). “Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver.” Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981). Even if the PCR court determines the applicant did not freely and voluntarily waive his appellate rights, the applicant must still petition the South Carolina Supreme Court to determine whether he was prejudiced by his failure to obtain review of a meritorious issue. Odom, 337 S.C. at 263, 523 S.E.2d at 756.

Respondent submits Applicant knowingly and intelligently waived his right to appellate review of his PCR hearing. However, this allegation raises questions of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

#### IV.

Respondent submits that any further claims must be summarily dismissed as successive to Applicant’s previous applications. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code (2014) provides:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are prohibited unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. at 450, 409 S.E.2d at 394. If Applicant could have raised these allegations in a previous application, then he may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised additional grounds for relief in his prior post-conviction relief application. Any allegation beyond Applicant's belated appeal claim would have to be supported by sufficient reasons why it could not have been raised in the previous post-conviction relief Application. Applicant has presented no such reason. Therefore any additional claim Applicant may present is barred as successive.

V.

Further, Respondent submits any other claims Applicant raises should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. *See* S.C. Code Ann. §§ 17-27-10 to -160 (2014). Section 17-27-45(a) states:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court held the one-year statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Moreover, ignorance of the statute of limitations for filing a petition for post-conviction relief is not an excuse for late filing. Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005). Applicant pled guilty to the offense he challenges in his application on June 7, 2010. The remittitur from Applicant's appeal was issued on August 1, 2010. Therefore, Applicant was required to file his PCR application on or before August 2, 2011. Applicant filed this application on October 31, 2012, more than one year after the statutory filing period expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon, 363 S.C. 432, 611 S.E.2d 494. In addition, this Court is authorized to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." § 17-27-70(c). Therefore, Respondent moves to summarily dismiss any claims in this application beyond the belated appeal claim for Applicant's failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

## VI.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

## VII.

WHEREFORE, Respondent requests an evidentiary hearing *solely* to address the issue of whether counsel was ineffective in failing to appeal the order denying Applicant's initial application for post-conviction relief; Respondent further moves to summarily dismiss any additional claim for being successive to Applicant's previous PCR application and for failure to file within the Statute of Limitations.

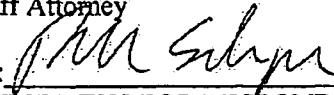
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

J. RUTLEDGE JOHNSON  
Assistant Deputy Attorney General

PATRICK L. SCHMECKPEPER  
Staff Attorney

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737

July 8<sup>th</sup>, 2015

1 State of South Carolina

Court of Common Pleas

2 County of Lexington

3

4 Alexander Edward Lynch, )

Transcript of Record

5 Applicant, )

2012-CP-32-4389

6 vs. )

7 The State of South Carolina, )

8

9

January 14, 2016  
Lexington, South Carolina

10

11 B E F O R E:

12 The Honorable J. Mark Hayes, Judge

13

14 A P P E A R A N C E S:

15 Patrick Schmeckpeper, Assistant Attorney General  
Attorney for the State

16

17 Anna R. Good, Esquire  
Attorney for Defendant

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Stacy S. Johnson, RPR  
Circuit Court Reporter

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E X H I B I T S

NO.

DESCRIPTION

ID. EVD.

\*\*\*NO EXHIBITS MARKED\*\*\*

## P R O C E E D I N G S

1  
2 (The following proceedings were held on January 14,  
3 2016.)

4 **MR. SCHMECKPEPER:** This is Alexander Edward Lynch  
5 v. The State of South Carolina, 2012-CP-32-4389. I beg  
6 the Court's indulgence. Mr. Lynch was convicted of murder  
7 by -- murder/homicide by child abuse in 2010 and sentenced  
8 to life imprisonment.

9 He's already had a PCR, Your Honor. That was in, I  
10 believe, 2011. He didn't file an appeal. He's currently  
11 -- in his current application, he's alleging ineffective  
12 assistant of post-conviction relief counsel for failure to  
13 file an appeal.

14 The State after speaking with his post-conviction  
15 relief counsel is consenting to relief pursuant to Austin  
16 v. State, so at this point I've got a proposed order. And  
17 if you'd like to hear from opposing counsel --

18 **MS. GOOD:** We don't object to that, Your Honor,  
19 obviously.

20 **THE COURT:** You've reviewed the proposed order?

21 **MS. GOOD:** Yes, sir, I have.

22 **THE COURT:** All right. I've reviewed the proposed  
23 order and have executed the proposed order.

24 **MR. SCHMECKPEPER:** Thank you, Judge.

25 **THE COURT:** Good luck to you, Mr. Lynch.

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(Whereupon, the proceedings were concluded at  
10:58 AM.)

## 1 C E R T I F I C A T E

2  
3 I, Stacy S. Johnson, Official Court Reporter  
4 for the Eleventh Judicial Circuit of the State of South  
5 Carolina, do hereby certify that the foregoing is a true,  
6 accurate and complete transcript of record of all the  
7 proceedings had and the evidence introduced in the hearing  
8 of the captioned case in Circuit Court on the 14th day of  
9 January, 2016.

10 This transcript may contain quoted material. Such  
11 material is reproduced as read by the speaker.

12 I do further certify that I am neither of kin,  
13 counsel, nor have an interest to any party hereto.

14  
15 May 17, 2016

16  
17 *Stacy S. Johnson*  
18 Stacy S. Johnson, RPR  
Circuit Court Reporter  
19  
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ORIGINAL

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

FILED IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL CIRCUIT RECEIVED

Alexander Lynch, # 341145,

2016 FEB 16 P 12:05

2012-CP-32-4389

MAR - 9 2016

Applicant,

BETH A. STURGG  
CLERK OF COURT  
LEXINGTON, SC

v.

SC SUPREME COURT  
ORDER GRANTING AN APPEAL  
PURSUANT TO AUSTIN V. STATE<sup>1</sup>

State of South Carolina,  
Respondent.

This matter comes before the Court by way of an application for post-conviction relief filed October 31, 2012. The Respondent made its Return on July 8, 2015, requesting an evidentiary hearing solely on the issue of whether Applicant was entitled to an appellate review of his first post-conviction relief action pursuant to Austin. An evidentiary hearing on the matter was convened on January 14, 2016, at the Lexington County Courthouse. Applicant was present at the hearing and represented by Anna Good, Esquire. Patrick Schmeckpeper, Esquire, of the South Carolina Office of the Attorney General represented the Respondent.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted during the June 2010 term of the Lexington County Grand Jury for murder/homicide by child abuse (2010-GS-32-0516). Elizabeth C. Fullwood, Esquire, represented the Applicant. On June 7, 2010, Applicant appeared before the Honorable R. Knox McMahon and pled guilty. Judge McMahon sentenced Applicant to life imprisonment.

A timely notice of appeal was filed on Applicant's behalf. In an order dated August 13, 2010, the South Carolina Court of Appeals dismissed Applicant's appeal pursuant to Rule

<sup>1</sup> Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

203(d)(1)(B)(iv), SCACR, for failure to make a showing that his argument was raised to or ruled upon by the circuit court judge. The Remittitur was returned on August 31, 2010.

Applicant subsequently filed for post-conviction relief on February 4, 2011 (2011-CP-32-0473). In his application, Applicant asserted claims of ineffective assistance of counsel. An evidentiary hearing was convened on August 14, 2012, at the Lexington County Courthouse before the Honorable W. Jeffrey Young. Applicant was present at the hearing and was represented by Daniel E. Kienker, Esquire. By written Order filed June 6, 2013, Judge Young denied and dismissed Applicant's post-conviction relief action. Applicant did not appeal.

### ALLEGATIONS

In his current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of PCR Counsel
  - a. PCR Counsel was ineffective in failing to file an appeal following the denial of application.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application. Prior to the start of the evidentiary hearing, the State indicated to this Court that they would be consenting to the grant of an Austin appeal. The State explained that they were consenting based off of their discussion with prior PCR Counsel, a review of a letter sent to Applicant from PCR Counsel, and discussion with Applicant's current PCR Counsel.

After review of the facts and circumstances surrounding the waiver of the Applicant's right to appeal the denial of his post-conviction relief application, this Court finds that the

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 LEXINGTON SC

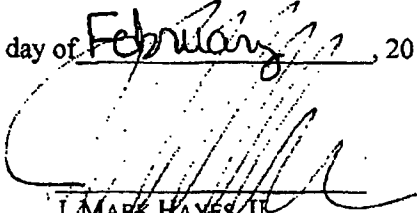
Applicant is entitled to appeal the denial of his first post-conviction relief application (2011-CP-32-0473) pursuant to Austin v. State. This Court finds that Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of his prior post-conviction relief action.

Based upon the foregoing, this Court finds that the granting of an appeal of the Applicant's first post-conviction relief action (2011-CP-32-0473) pursuant to Austin v. State is warranted.

**IT IS THEREFORE ORDERED:**

1. That the Applicant be granted an appeal of case 2011-CP-32-0473 pursuant to Austin v. State; and
2. That the Applicant remains in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 3<sup>rd</sup> day of February, 2016.



J. MARK HAYES, II.  
 Presiding Judge  
 Eleventh Judicial Circuit

Lexington, South Carolina.

FILED  
 2016 FEB 16 P 12:05  
 BETTIE A. CHAFFICE  
 CLERK OF COURT  
 LEXINGTON, SC

WITNESSES

Lexington County Sheriffs Department

Eric R. Russell

Law Enforcement Case #: 09049263

DBM

ARREST WARRANT NUMBER

TR-00065

DOCKET NO. 2010GS3200516

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JUNE TERM 2010

THE STATE  
vs.

Alexander Edward Lynch

ACTION OF GRAND JURY

**TRUE BILL**

*DM Heed*  
Foreperson of Grand Jury

Date: *6/7/10*

DICT

CDR #: 2356

Indictment for

Murder/Homicide By Child Abuse

§ 16-03-0085(A)(1)

DONALD V. MYERS, SOLICITOR

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LEXINGTON )  
 )

INDICTMENT FOR  
 Murder/Homicide By Child Abuse

§ 16-03-0085(A)(1)

At a Court of General Sessions, convened on June 2010, the Grand Jurors of Lexington County present upon their oath:

That Alexander Edward Lynch did in Lexington County, South Carolina, on or about June 6, 2009, cause injury to \_\_\_\_\_, date of birth, April 10, 2009, a child who was under the age of eleven years at the time of his death on June 8, 2009, and that the defendant did cause the death of said child while committing child abuse or neglect, to wit: the defendant did violently shake the infant victim resulting in his death, and/or the defendant did violently assault the infant victim resulting in his death, and the death of said child occurred under circumstances manifesting an extreme indifference to human life; in violation of Section 16-3-85, South Carolina Code of Laws (1976, as amended).

A TRUE COPY

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Lex. Co. C.C.C.P., G.S. & F.C.

*Debra B. Moore*  
 ASSISTANT SOLICITOR